

MODEL IMPLEMENTATION AGREEMENT
OPERATING PERMITS PROGRAM

June 30, 1993

This model implementation agreement (IA) is provided by the Environmental Protection Agency (EPA) as an aid in preparing an IA between an EPA Regional Office and a State or local agency (or Indian tribe) permitting authority. The purpose of an IA is to assure cooperation and a common understanding of the roles of each agency in implementing an operating permits program as required by Title V of the Clean Air Act. The IA should define responsibilities of both EPA and the permitting authority in assuring proper communication with respect to program implementation and timely resolution of program issues. It should establish policies and procedures to be followed in implementing the permits program and EPA regulations in 40 CFR Part 70. While it is strongly encouraged, the IA is not required under Part 70 as part of the operating permits program. In response to workload concerns expressed by permitting authorities, EPA considers a reasonable goal for the IA to be signature by both parties by the time of permit program approval or shortly thereafter. The IA, under this approach, need not be submitted by the date the permit program is submitted.

The IA should not contain, and cannot be a substitute for, substantive program elements that are required by Part 70 to be in the operating permits program itself. The items contained in the model are those that deal with how the program can be implemented in an expeditious manner and how problems are identified and resolved so delays in permit review and issuance can be avoided. The specific form and details of any IA will vary with each Region and each permitting authority. This model is meant only to give examples of how an IA can treat the various areas of implementation.

The model IA was developed using a memorandum of agreement (MOA) from the Water program as an example. Another MOA from the Resource Conservation and Recovery Act program was also used as input to the model. A draft IA was prepared and made available to EPA Regional Offices and State and local agencies for review in September 1992. Comments from those reviewers have been incorporated into this final document. This model reflects the formality of the two MOA's used as examples in its preparation; however, this level of formality is not necessary for any IA's developed for the operating permits program. Rather, the IA may take any form agreed to by both agencies which will assure the smooth and timely implementation of permits programs. This model is only a tool that can be used as desired by an individual permitting agency and the corresponding Regional Office as an aid in developing their IA.

For clarifying comments within the IA, the "redline" font in WordPerfect 5.1 is used.

(Example of redline font)

This font may show up differently depending on the printer used to print this file.

IMPLEMENTATION AGREEMENT
BETWEEN
[THE PERMITTING AGENCY]
AND
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION

AIR QUALITY OPERATING PERMITS PROGRAM

I. GENERAL

A. This implementation agreement (IA) defines policies, responsibilities, and procedures, pursuant to Part 70 of Chapter I of Title 40 of the Code of Federal Regulations (Part 70), by which the operating permits program will be administered by both the [State and/or local or Indian tribe] permitting agency and the Environmental Protection Agency (EPA). Such agreement will be maintained consistent with the Clean Air Act (Act) and other existing regulations, notably State implementation plans (SIP's). The provisions of this IA include strategies and priorities for all aspects of operating permit issuance, compliance monitoring, and enforcement. [Specify if the IA is for an interim approval and add a section describing, to the extent necessary, any actions to be taken by either party to obtain full program approval.]

B. This agreement is entered into by the Director of the air permitting agency (hereinafter "the permitting agency") and the EPA Regional Administrator [or his/her designee such as the Air Division Director], Region (hereinafter "EPA"). [This can be a separate agreement between EPA and another permitting authority, such as an Indian tribe or local agency, that would administer its own program separate from the State.] The geographic area covered by this IA is [specify the geographic area covered by the program for which this IA is written such as the whole State, the part of the State not covered by other programs, Indian lands, or local agency jurisdictions]. This IA encompasses responsibilities of all agencies, State or local or Indian tribes, who will administer any part of the permitting program covered by this IA. [If appropriate, list all other agencies that will assist in implementing the program such as any local agency or other State agencies that perform part of the permitting function and indicate their responsibilities in this IA.]

C. Nothing in this IA shall be construed to restrict in any way EPA's authority to fulfill its oversight and enforcement responsibilities under the Act. Nothing in this IA shall be construed to contravene any provision of Part 70. This IA is in addition to, and does not contravene, the following other agreements [specify any agreements such as new source review (NSR) implementation or enforcement agreements].

D. This IA shall become effective upon signature by both or all parties, which shall occur no later than the date the notice of EPA approval of the program is published in the Federal Register.

E. This IA may be modified only after mutual consent of both or all parties for any purpose. Any revisions or modifications to this IA must be in writing and must be signed by the permitting agency and EPA.

II. POLICY STATEMENT

A. Each party is responsible for ensuring that its obligations under Part 70 and Title V of the Act are met. Both parties agree to maintain a high level of communication, cooperation, and coordination between their respective staffs to assure successful and effective administration of the operating permits program.

B. The permitting agency has primary responsibility for:

1. Administering the program in accordance with Part 70, applicable State/local law, objectives of the Act, EPA policies and guidance, and this IA.
2. Implementing any special conditions associated with approval of the program.
3. Making any changes to the approved program necessitated by regulatory or policy changes.
4. Sharing information with EPA regarding administration of the program without restriction and in a form specified by EPA (describe) including computer-readable files to the extent practicable.

C. The EPA has responsibility for:

1. Reviewing permits and providing effective oversight of the operating permits program to ensure consistency with Part 70 and this IA and to promote national consistency in implementation of the Act.
2. Providing ongoing technical and other assistance on permit matters as requested.
3. Informing the permitting authority as soon as possible about new EPA regulations and any related litigation results or settlements, new Federal standards, implementation information and related Federal policies, the effect of these new requirements, and the action needed by the permitting authority.

III. PROGRAM IMPLEMENTATION

A. Both EPA and the permitting agency will maintain a list [specify location or include in the IA] of contact persons involved with implementation of the permits program.

B. The EPA and permitting agency agree to participate in conference calls as needed [specify schedule if periodic calls are set up] to discuss program implementation and discuss specific issues which need resolution. Either party may call meetings to review operating procedures, resolve problems, or discuss concerns regarding program implementation. The participation level will be the EPA Regional [specify level such as the Branch Chief] or his/her designee and the permitting agency [specify level such as the Air Program Director] or his/her designee.

C. The permitting agency and EPA each agree to notify the other as early as possible of any problems either party anticipates with any permit or permit application such as anticipated public controversy, complex equivalency or trading provisions, etc.

D. The permitting agency agrees to do the following:

1. Maintain a list [specify update frequency] in the Aerometric Information retrieval System (AIRS) Facility Subsystem (AFS) of sources:
 - a. Which must have an operating permit under the permitting program.
 - b. Which are not subject to Part 70's operating permit obligations due to having taken federally-enforceable limits to avoid such obligations.
 - c. Which have been permitted and are in a source category contained in the initial list of categories (see 57 FR 31576, July 16, 1992) for which EPA will develop emissions standards for HAP's.
2. Maintain an adequate public file [specify location] (accessible for EPA audit) for each permittee. The file must include the permit application (including the compliance plan), the issued permit, a record of the public notice procedures the permit has undergone, a record of the commenters and the issues raised during the public participation process, monitoring reports, inspection reports, compliance certifications, enforcement actions, revisions to permits and applications for revisions, and other pertinent information.
3. Notify EPA when variations occur in the transition schedule for issuing permits during the first 3 years of the program.
4. If requested by EPA due to evidence indicating the permitting program is underfunded, provide an accounting demonstrating how revenue from required permit fees was collected and spent by the permitting agency and demonstrating that the fee structure is

adequate. Or, if the fee structure is not adequate, modify the permit fee system, as appropriate, to ensure that it covers all reasonable direct and indirect costs of administering the program as the costs change over time.

5. Maintain legal authority and resources needed (and provide a timetable, as requested by EPA, of activity for obtaining any necessary legal authority and resources) for effective implementation and enforcement through the permit process of all applicable requirements.
6. Develop and maintain a vigorous enforcement program.
7. Update the permitting program as needed, and, specifically, adopt the necessary authority to implement and enforce the following requirements or programs within the time periods or by the date(s) specified below: List programs or requirements and corresponding dates or time periods (e.g., authority for section 112(g) by the effective date of the permit program, authority for the acid rain program by a date certain, or authority for any promulgated MACT standard or for implementing section 112(r) within a certain time period following promulgation by EPA) which will prevent any unreasonable delay in permit issuance.
8. Ensure that aspects and implementation of the permitting program do not interfere with the acid rain program, particularly allowance trading [section 70.7(a)(4)] and the Administrator's decisions on excess emissions offset plans.
9. Assist EPA in determining the sources located on Indian lands for which EPA must assume permitting responsibility under the Title V program.
10. Notify EPA whenever the permitting agency proposes to transfer all or part of the program to any other agency, identify any new division of responsibilities among the agencies involved, and not transfer administration of that program component to the other agency until EPA approval of the program revision.
11. Ensure that the permit information system is compatible with the national operating permit system, i.e., AIRS-AFS, with regard to the minimum federal data elements.
12. Maintain an automated compliance monitoring tracking system compatible with and/or existing in AIRS.

E. The EPA agrees to do the following:

1. Provide technical support and assistance and training opportunities as available for interpretation of national regulations, development of technology-based requirements, automated transmission of permit data to EPA in an AIRS-AFS compatible format, general technical assistance in determining appropriate permit conditions and processing permits, and other areas as requested by the permitting agency.
2. Make reasonable efforts to communicate to the permitting agency when additional legal, technical, and financial resources may be necessary to implement new section 112 requirements as they become applicable.
3. Seek to work closely with the permitting agency in making case-by-case MACT determinations under sections 112(g) or (j), including providing to the permitting agency the use of centralized EPA data bases and exploring with the permitting agency the possible use of general permits to establish a presumptive MACT for certain qualifying source categories.
4. Assist the permitting agency by making available model permits and model general permits developed by EPA.
5. Cooperate with the permitting agency by allowing appropriate flexibility when determining the most effective and expeditious means of implementing EPA policies and guidance.
6. Review and incorporate into the approved program after notice in the Federal Register and opportunity for comment, where appropriate, any approvable changes the permitting agency makes and submits as program modifications [specify timeframe]. Provide timely input where the permitting agency provides such an opportunity.
7. Provide the permitting agency opportunity for involvement and input into new program activities or initiatives.
8. Specify to the permitting authority the minimum federal data elements that are necessary for EPA to execute its program oversight and monitoring requirements.

F. The permitting authority and EPA agree to confer on and develop a list of appropriate pollution prevention activities which can be implemented through the permits program. This would consist of examples of pollution prevention measures that sources could adopt; the list being used to provide stimulus to sources to devise measures specific to their facilities. Also, this effort would include listing approaches that the permitting authority

could take during program implementation to encourage sources to adopt pollution prevention measures (e.g., reduced permit fees for sources adopting pollution prevention measures).

G. The permitting authority and EPA agree that the following procedures will be followed in implementing section 112(r) of the Act: (list procedures such as how and where the list of sources required to submit a risk management plan will be maintained, who will be the recipient(s) of the plan, how the plans will be reviewed, how review of annual certifications of plan implementation will be carried out, and how the requirements will be implemented in the operating permit.)

IV. PROGRAM OVERVIEW

A. To assure that program requirements are met, the EPA agrees to do the following:

1. Expeditiously review and appropriately respond to all information submitted by the permitting agency.
2. Provide for public notice within [specify timeframe] and final approval in the Federal Register within [specify timeframe] of any approvable substantial program modifications submitted by the permitting agency or initiated by EPA.

B. The permitting agency agrees to do the following with respect to program revisions:

1. Seek to have expeditiously adopted any necessary legislation and take other actions necessary to preserve and maintain the approval status of the permitting program.
2. Notify EPA in advance of, and transmit the text of, any to proposed substantial change in the program (i.e., permit program-related regulations, forms, statutes, local ordinances, resource levels), and notify EPA within 10 days of, and transmit the text of, any change to the program.

C. The permitting agency and EPA agree that, in accordance with section 70.4(i), operating permits program revisions become effective only upon approval by EPA. Nonsubstantial program revision approval may be made by a letter from EPA to the permitting agency, but substantial program revisions must go through the public notice provisions specified in section 70.4(i).

D. The permitting agency and EPA agree that no program revision will be necessary provided the program contains a commitment to expeditiously adopt any new authority and adopt and implement additional regulations as needed to implement future Federal applicable requirements (e.g., section 112 requirements).

E. The permitting agency and EPA agree that, where the program contains a demonstration and/or commitment to adopt authority for and implement future applicable requirements (e.g., future MACT standards), the permitting authority will automatically implement each new requirement unless it informs EPA to the contrary. The EPA may request a review of individual permitting agency actions to ensure that the needed legal authority and/or technical capabilities are in place in time for their proper use.

F. The permitting agency and EPA agree that EPA will assess the permitting agency's administration of the operating permits program on a continuing basis for consistency with Title V, Part 70, and all other requirements of the Act. This assessment will be accomplished by EPA review of information submitted by the permitting agency, permit overview, and compliance and enforcement overview.

1. The EPA may consider written comments that are received from regulated persons, the public, and Federal, State, and local agencies in assessing the program. Copies of any comments received from such sources will be provided to the permitting agency within 7 working days of receipt.
2. The EPA will audit the permits program by examining the files and documents at the permitting agency for selected facilities to determine that permits are processed, issued, reopened, revised, renewed, and enforced in a manner consistent with Federal requirements. Program audits will be conducted on an as needed basis [specify interval if possible].
3. Whenever EPA determines that a permitting agency is not adequately administering or enforcing the program, EPA will notify the permitting agency of the determination as soon as possible and the reasons for it. The permitting agency and EPA will then determine the process and timeframe for correcting the program deficiencies in an expeditious manner.
4. To ensure effective program overview, the permitting agency agrees to allow EPA access to all files and other requested information deemed necessary by EPA for reviewing program administration and enforcement.

G. The permitting agency and EPA agree to seek early communication concerning development of a program, to be submitted under section 112(l), by the permitting agency implementing section 112 if the program will differ from the EPA promulgated rules for implementing section 112.

V. PERMIT REVIEW AND ISSUANCE RESPONSIBILITIES

A. The permitting agency agrees to do the following:

1. Draft, provide public notice for, issue, reopen, revise, modify, revoke and reissue, renew, and terminate permits in an expeditious manner.
2. Process significant permit modifications in an expeditious manner with the goal of processing the majority within 9 months of receipt of a complete application.
3. Work with EPA on a periodic basis (specify) to determine which draft permits need to be reviewed by EPA prior to the beginning of the public comment period and make those permits available to EPA (specify time period, such as 30 days) prior to the beginning of that period, except where a longer review is needed.
4. Give notice of intent to deny a permit to EPA and the applicant within 3 working days of that decision and give EPA notice whenever it intends to terminate an issued permit.
5. If any permit is modified as a result of any administrative or court action, transmit a copy of the permit to EPA with the changes identified.
6. Meet all applicable procedures and program requirements in issuing those permits which are waived from EPA review under section 70.8(a)(2) and provide EPA with copies of such permits within 7 working days of any request for copies.
7. Notify EPA within [specify timeframe, such as 14 working days] of receipt of the permit application for permit actions identified by EPA [list those permit actions to the extent possible] as having particular national (e.g., section 112(g) case-by-case MACT determinations) or regional interest and report these data in an AIRS-AFS compatible format.
8. After the initial transition period, notify EPA within 15 months of receipt of any complete permit applications upon which no issuance or denial action has been taken by the permitting agency and final action is in jeopardy of not taking place within the statutory timeframe of 18 months from receipt of the complete application.

B. The EPA agrees to do the following:

1. Maintain a list [specify location], and consult with the permitting agency in its development, of minor

source categories or types of permit applications for which EPA waives the right to review under section 70.8(a)(2).

2. Maintain a list [specify location], and consult with the permitting agency in its development, of source categories for which a summary checklist may be submitted to EPA in lieu of a permit application.
3. Provide comments or objections to proposed permits in an expeditious manner, but no later than 45 days from receipt of the proposed permit and all necessary supporting information.
 - a. Include with any objection a statement of the reasons for the objection and the actions that should be taken by the permitting agency to resolve the basis for the objection.
 - b. Send a copy of its written comments to the permit applicant.
 - c. Issue or deny the permit if the permitting agency fails to submit a revised permit for review within 90 days after receipt of an objection.
 - d. Withdraw its objection when satisfied that the permitting agency has resolved the basis for the objection and provide a copy of the withdrawal to the applicant.
4. Work with the permitting authority on a periodic basis (specify) to determine which draft permits need to be reviewed by EPA prior to the beginning of the public comment period and expeditiously make comments on those permits available to the permitting authority, but no longer than (specify time period, such as 30 days) from receipt, except where a longer review is needed as agreed to by the permitting authority.
5. Indicate to the permitting authority what constitutes necessary supporting information as required by section 70.8(c)(1) in the review of proposed permits.
6. Grant or deny public petitions within 60 days.
7. Provide assistance in interpreting permit provisions necessary to eliminate SIP "gaps" or ambiguities.
8. Provide a list of permit actions identified by EPA as of particular national or regional interest.

VI. REPORTING AND TRANSMITTAL OF INFORMATION

A. The permitting agency agrees to submit in a form specified by EPA (describe), including computer-readable files to the extent practicable, the following information to EPA:

<u>Description</u>	<u>Frequency</u>
Basic tracking information based on the permit application.	Prior to the public comment period
Copies of all permit applications and proposed permits except those for which EPA has waived review.	Within 5 working days after end of public comment or such longer time as needed for significant changes
Copies of all permit applications and public notices for which EPA has waived review.	Upon request
Copies of summary forms of permit applications.	As developed
Copies of all final permits and all settlements and decisions in permit appeals.	Quarterly, in batches, unless requested by EPA
Copy of public comments on a permit.	Upon request
Copies of all compliance inspection reports, report forms, data, and transmittal letters to major permittees or a summary thereof if agreed to by EPA.	Within 30 days of inspection or in monthly batch submittals

Source-specific information in AIRS-AFS regarding enforcement of the program, including inspections, monitoring reports, compliance certification, violations, and the resolution of violations.

Quarterly updates of reports

(Any other data elements in AIRS-AFS compatible format that EPA specifies is necessary to execute its oversight and monitoring requirements.)

(As specified by EPA)

B. The EPA agrees to submit the following to the permitting agency:

Description

Frequency

A list of compliance inspections EPA intends to conduct jointly with the permitting agency as part of its Overview Plan.

Annually

Proposed revisions to the schedule of compliance inspections.

As needed

Copies of all EPA compliance inspection reports and data.

Within 30 days of inspection

A review of the permitting agency's administration of the program based on the agency's reports, meetings with agency officials, and file audits.

As performed

Any transmittal letters for sections 113 or 114 actions by EPA.

Within 5 working days of transmittal

C. The permitting agency and EPA agree to the following procedures with respect to confidentiality of information:

1. Any information obtained or used in the administration of the program shall be available to EPA or the permitting authority upon request without restriction. If the information has been submitted to the permitting agency under a claim of confidentiality, the agency must submit that claim to EPA when providing the information.
2. If any information is submitted to the permitting agency under a claim of confidentiality and the permitting agency's statutes prohibits submitting that information to EPA, the permitting agency will require the information to be submitted by the source directly to EPA.
3. Any information obtained from a permitting agency or

from a source and subject to a claim of confidentiality will be treated by EPA in accordance with the regulations in 40 CFR Part 2.

VII. SIGNATURES

STATE OF _____

By: _____
Commissioner
[Or State Air Agency Director]

Date: _____

U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION ____

By: _____
Regional Administrator
[Or his/her designee]

Date: _____

[LOCAL AGENCY]

By: _____
Director

Date: _____